

MINUTES

LRC Committee on Mechanics Lien on Real Property

March 7, 2012 – 1:00 p.m.
Room 1027, Legislative Building

Chair Brunstetter called to order a meeting of the LRC Committee on Mechanics Lien on Real Property on Wednesday, March 7, 2012 at 1:00 p.m. in room 1027 of the Legislative Building. The following House Sergeants at Arms were present to serve the committee: John Brandon and Doug Harris. The following Senate Sergeant at Arms were present to serve the committee: Donna Blake and John Fitchett. The following members of the committee were present: Chairs Stevens and Brunstetter and Representative Stam and Senator Harrington.

Chair Brunstetter thanked the members of the committee for attending the meeting, and thanked the Sergeants at Arms for their assistance to the committee. He asked for a motion to approve the minutes from the previous meeting. Chair Stevens made the motion, and the minutes were approved unanimously.

Chair Brunstetter let the committee know that the meeting would be spent going over changes to **Bill Draft 2011-TGz-13A, AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA'S MECHANICS LIEN, TAX LIEN, AND PAYMENT BOND LAWS**. Chair Brunstetter thanked the stakeholders for taking time to sit down and work out issues. There has been discussion of the hidden lien issue, which would not be discussed in the March 7 meeting, but will be discussed sometime in the next few weeks. Chair Brunstetter said that the committee chairs are of the mind that there are some legitimate concerns that have been raised relating to hidden liens, and it is their preference that the stakeholders spend some time working together on the issue to work out differences and solutions. One such concern is that the market for title insurers remains viable.

Chair Brunstetter asked Bill Patterson to explain the changes made to **Bill Draft 2011-TGz-13A, AN ACT TO MAKE VARIOUS AMENDMENTS TO THE NORTH CAROLINA'S MECHANICS LIEN, TAX LIEN, AND PAYMENT BOND LAWS**. Mr. Patterson explained the changes to the bill draft.

Mr. Patterson first noted that an additional section has been added to the bill draft, which is now Section 12. Section 12 now includes the text of Senator Stein's bill, **SB 486 AN ACT TO REQUIRE THE RELEASE OF A SUBDIVIDED TRACT OF LAND FROM A TAX LIEN UPON PAYMENT OF TAXES DUE ON THAT TRACT**. Because of this addition, the short title of the bill draft has changed. The changes to the bill draft are as follows:

- Section 2 of the bill draft is another new section. This is a provision that is being added at the suggestion of Andy Carmen of Bell, Davis and Pitt. This is part of a number of suggestions that were also made as an attachment to the letter from, Keith Coltrain from Wall Templeton and Haldrup, PA, which was shared with the committee at the last meeting and is on the committee website. This section would require that persons who are filing claims of lien must mail a copy of the claim of lien on the record owner of the property, and if the lien claim is based on someone else's interests, that person must also be named. Mr. Patterson explained that one change that is being made to other statutes is

to no longer require that the notice of funds be attached to the claim of lien. Because this is not required in this bill draft, this change in Section 2 is a way to get this information to the owner.

- On page 3 of the draft, there is a conforming change that goes along with the previous change in Section 2. In addition to naming the owner, the contractor must also be named. Because there is a service requirement in 44(A)-11, there is certification that that has been done.
- The next substantive change to the bill draft is in Section 4 on page 5. At the last meeting of the committee, Representative Stam circulated a draft of an amendment that is included in Section 4, which deals with the enforcement of a lien by civil action.
- The next change is on page 6 and is a change in Section 6 of the bill draft to 44(A)-18. These changes start on line 3, adding the word “first” to line 33. The next change is in lines 40-43. The original bill draft had contained a reference to a bankruptcy petition being filed by or against any contractor or subcontractor, and that language has been removed. The word “owner” has been added in line 41 and the word “make” in line 42. This makes it possible for the owner to make payments in the ordinary course of business. In the original draft, there were subsections H and I. These subsections were removed because they were redundant.
- The next change is on page 9 of the draft and it is to Section 44(A)-23. One of the changes made to address the bankruptcy issue is to eliminate the requirement of giving notice of claim of lien on funds for claim of lien on real property. This was removed. In lines 26-28, the option of using the first date of furnishing of the contractor in the lien claim form has been added. The language removed in lines 37 and 38 is the same language that was removed in lines 20 and 21. The requirement that the notice of claim of lien of funds be removed is also reflected on page 10.
- The changes to Sections 10 and 11 of the bill draft came as a result of stakeholder meetings last week. The changes to Section 10 are as follows: the title was changed to reflect changes in section 10, and under this language it is deemed to be deceit or misconduct if the person engaging in the activity is a licensed contractor. If that conduct results in harm to someone, that person is subject to disciplinary action.
- Article 3 deals with payment bonds. In order to make the consequences of making false statements clear, language has been added in this section.
- Section 11 of the bill draft on page 12 contains three or four major changes as a result of the stakeholder meetings. The changes are on line 7—formerly the bill draft had required that notice be provided within 30 days after the work or supplies for which a claim was being made under the payment bond. The bill draft now gives 60 days. Another change was in subsection E. The requirements under this section are not applicable if the claim is \$10,000 or less, and if the claim is over \$10,000 the requirements only apply to the amount over \$10,000. In line 11, the notice can be given by signature confirmation. In addition to certified mail or registered mail, any of the forms of service according to the civil procedure rules may be used. This will authorize the use of the less expensive form of service when serving someone other than a natural person. In subsection D the language was changed to refer to a public subcontract. Another change to this section is to eliminate redundant language in subsection B. One of the big problems that the suppliers and subcontractors stated that they had was knowing where to send the notice, and this problem is addressed by subsection F.
- Section 12 is a new section of the bill. It incorporates the provisions from **SB 486 AN ACT TO REQUIRE THE RELEASE OF A SUBDIVIDED TRACT OF LAND**

FROM A TAX LIEN UP PAYMENT OF TAXES DUE ON THAT TRACT relating to tax liens on subdivided parcels of property. This differs only in one respect from Senate Bill 486, and that is that the amount of time that a county assessor has to provide information was extended from 5 days to 10 days.

- These are all substantive changes, the changes to effective dates were conforming changes.

Chair Brunstetter asked the committee members if they had any questions about the bill draft.

Chair Stevens was recognized to ask a question: on page 2, lines 24, 37, 38, and 40, the term “recipient” was used, and the Representative did not believe this term was used before. She asked if this would create confusion or litigation? Mr. Patterson suggested a cross-reference, as Rep. Stevens suggested, as a solution to this problem. Chair Stevens noted that it is important to make sure that it is addressed properly in order to get the advantage of the presumption. Chair Stevens has also found the use of the term “qualifying party” on line 33 on page 11. Mr. Patterson responded that this term is used in Article 1. Mr. Patterson said that a cross reference can be made if necessary in both cases.

Representative Stam was recognized for four questions. He first asked if this bill draft would be a new bill. Chair Brunstetter responded that it will be. Secondly, Representative Stam would like to get rid of the use of registered mail if possible. Mr. Patterson said it is possible, and Chair Brunstetter said that the issue can be examined. Representative Stam also asked a question about partial lien waivers on page 4. He asked if there a default provision if the lien waiver contradicts the text. Representative Stam also has a serious question about page 1, lines 21-24 about bringing things offsite to real property, whether or not it improves the property. He asked if this would go down the road of having attorneys have liens on the property, even though they never set foot on it. Mr. Patterson responded that his understanding is that what this language does is include a very narrow additional group of people, and it is intended for things that are custom made for a particular project. Mr. Coltrain was recognized to provide further information. Representative Stam wants to know why we are picking out one group of people. Mr. Coltrain responded that the intent was to narrowly include a group that was not included, specifically the pre-cast concrete group. Representative Stam remained concerned that this will favor one group, but that someone else will lose out, specifically the attorneys who did the zoning, or someone else who did work but wasn’t compensated. Mr. Coltrain responded that this one group was disenfranchised because they do not do their work on site. Representative Stevens suggested the use of the term “offsite materials” and then the definition in parenthesis. Representative Stam remained concerned that some entities are not being included in the discussion. Chair Brunstetter suggested that the committee not chase the unknown in this situation.

Chair Brunstetter asked staff to take this draft and make the changes suggested today, and any other technical changes that are necessary. He let interested parties know that Mr. Patterson is available for questions and concerns. Representative Stam would like interested parties to discuss whether the lien waiver or the title controls.

There being no further business, the meeting adjourned at 1:26 p.m.

Respectfully Submitted:

Senator Pete Brunstetter, Acting Chair

Representative Sarah Stevens, Chair

Sarah Hardin, Committee Assistant

Attachments:

Attachment 1: Interested Parties in Attendance

Attachment 2: Meeting Agenda

Attachment 3: Bill Draft 2011-TGz-13A

Attachment 4: Mr. Keith Coltrain's letter

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